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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,  
11 FOR THE USE AND BENEFIT OF:  
12 HELIX ELECTRIC, INC., a California  
corporation,

13 Plaintiff,

14 v.

14 KISAO RQ 8A 2JV, a joint venture;  
FEDERAL INSURANCE  
15 COMPANY, a New Jersey  
corporation; and WESTERN SURETY  
16 COMPANY, a South Dakota  
corporation,

17 Defendants

18 KISAO RQ 8A 2JV, a joint venture,

19 Counter Claimant,

20 v.

21 UNITED STATES OF AMERICA  
FOR THE USE AND BENEFIT OF:  
22 HELIX ELECTRIC, INC., a California  
corporation; TRAVELERS  
CASUALTY & SURETY COMPANY  
23 OF AMERICA; and ROES 1 through  
10, inclusive,

24 Counter Defendants.

25 HAYES, Judge:

26 The matter before the Court is the motion to dismiss this action for lack of federal  
27 jurisdiction filed by Counter-Defendant United States of America for the Use and  
28 Benefit of Helix Electric. Inc. ("Helix"). (ECF No. 54).

CASE NO. 15cv1024-WQH-KSC  
ORDER

1 **I. BACKGROUND**

2 On May 7, 2015, the United States of America for the Use and Benefit of Helix  
3 Electric, Inc. (“Helix”) initiated this action by filing a Complaint against the KISAQ  
4 RQ 8A 2JV (“JV”), Federal Insurance Company, and Western Surety Company. (ECF  
5 No. 1). The Complaint alleges the following claims for relief: (1) breach of subcontract  
6 against the JV, (2) recovery under the Miller Act Payment Bond against Federal  
7 Insurance and Western Surety, and (3) quantum meruit against the JV. *Id.* The  
8 Complaint alleges, “Jurisdiction in this matter is conferred under 40 U.S.C. sections  
9 3131-3134 (Miller Act). The Court has pendent and supplemental jurisdiction over the  
10 state law claims alleged in the Complaint pursuant to 28 U.S.C. section 1367.” (ECF  
11 No. 1 at 1).

12 On August 10, 2015, the JV, Federal Insurance, and Western Surety collectively  
13 filed an Answer. (ECF No. 8 at 1-8). The JV also brought a counterclaim alleging  
14 breach of subcontract against Helix. Further, the JV alleged a counterclaim for recovery  
15 under performance and payment bond against Travelers Casualty & Surety Company  
16 of America (“Travelers”). (ECF No. 8 at 9-18).

17 On October 31, 2016, Federal Insurance, the JV, and Western Surety filed a  
18 motion for partial summary judgment and summary judgment. (ECF No. 25). The JV,  
19 Federal Insurance, and Western Surety moved for summary judgment as to the three  
20 causes of action alleged by Helix in Helix’s complaint and the JV moved for partial  
21 summary judgment as to liability on the JV’s counterclaim for breach of subcontract  
22 arising from the Helix’s alleged (1) failure to adequately staff the project, (2)  
23 abandonment of the project, and (3) defective work. *Id.*

24 On February 24, 2017, the Court heard oral argument on the motion for summary  
25 judgment and partial summary judgment. During oral argument, Helix moved to  
26 dismiss Helix’s Complaint against the JV, Federal Insurance and Western Surety with  
27 prejudice. The Court orally granted the motion and dismissed the Complaint against  
28 the JV, Federal Insurance, and Western Surety with prejudice.

1 On April 10, 2017, the Court issued an order stating

2 IT IS HEREBY ORDERED that the JV's motion for partial  
3 summary judgment (ECF No. 25) as to liability on its counterclaims  
4 arising from Helix's abandonment of the project and defective work on the  
end line splices and crimping conditions and otherwise DENIED.

5 IT IS FURTHER ORDERED that Helix's complaint against the JV,  
6 Federal Insurance, and Western Surety is dismissed with prejudice. (ECF  
7 No. 1). The motion for summary judgment filed by the JV, Federal  
Insurance, and Western Surety (ECF No. 25) as to the causes of action  
alleged in Helix's complaint is DENIED as moot.

8 (ECF No. 50). The Court granted summary judgment to the JV on its breach of  
9 subcontract counterclaim arising from Helix's abandonment of the project and defective  
10 work on the end line splices and crimping conditions as to liability only; the Court has  
11 not yet made any ruling as to damages relating to these issues. The following causes  
12 of action, which were not resolved on summary judgment, also remain pending before  
13 the Court: the JV's counterclaim against Travelers for recovery under performance and  
14 payment bond and the JV's counterclaim against Helix for breach of subcontract arising  
15 from Helix's failure to adequately staff the project.

## 16 **II. CONTENTIONS OF THE PARTIES**

17 Helix contends that this action should be dismissed in its entirety for lack of  
18 jurisdiction.<sup>1</sup> (ECF No. 54). Helix contends that there is no diversity between the  
19 parties and the only federal claim in this action, the Miller Act claim, has been  
20 dismissed with prejudice. *Id.* at 4-5. Helix contends that the Court should decline to  
21 exercise supplemental jurisdiction over the remaining state law claims. Helix contends  
22 that there is no reason for this Court to retain jurisdiction because only state law claims  
23 remain and "principles of comity are well-served by allowing the state courts to resolve  
24 claims solely of state law." *Id.* at 6. Helix contends that there will be "minimal  
25 redundancy or waste of judicial resources if this case is dismissed" at this stage in the  
26 proceedings. *Id.* at 9. Helix contends that the JV has failed to satisfy its burden to

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27 <sup>1</sup> Helix request for judicial notice of certain facts and documents is denied as  
28 unnecessary. *See, e.g., Asvesta v. Petroutsas*, 580 F.3d 1000, 1010 n. 12 (9th Cir. 2009)  
(denying request for judicial notice where judicial notice would be "unnecessary").

1 establish jurisdiction under the federal enclave doctrine. (ECF No. 62 at 6). Helix  
2 contends that the principle behind federal enclave jurisdiction of ensuring that no area  
3 is left without laws regulating private rights is inapplicable where the dispute centers  
4 around a contract in which the parties voluntarily subject themselves to California law.  
5 *Id.* Helix contends that federal enclave jurisdiction does not apply because MCAS  
6 Cherry Point is not the locus where the breach of contract claim arose. *Id.* at 7. Further,  
7 Helix contends that portions of MCAS Cherry Point are not a federal enclave. *Id.* at 8.

8 The JV contends that this motion is “an attempt to forum shop and seek a re-start  
9 of this matter” due to Helix’s failure to diligently litigate the case and various rulings  
10 against it. (ECF No. 59 at 1). The JV contends that the Court should exercise  
11 supplemental jurisdiction over the remaining claims in order to ensure fairness, promote  
12 judicial economy, and discourage forum-shopping. *Id.* at 2. The JV contends that Helix  
13 is “trying to frustrate the potential enforcement of a judgment against it” and that  
14 dismissal would be “extremely unfair” to the JV given the late stage and posture of this  
15 case. *Id.* at 10. The JV further contends that the Court properly has federal question  
16 jurisdiction under 28 U.S.C. § 1331 through federal enclave jurisdiction. The JV  
17 contends that MCAS Cherry Point is a federal enclave and district courts properly have  
18 jurisdiction “over disputes arising therefrom.” *Id.* at 6.

### 19 **III. DISCUSSION**

20 Pursuant 28 U.S.C. § 1367, “in any civil action of which the district courts have  
21 original jurisdiction, the district courts shall have supplemental jurisdiction over all  
22 other claims that are so related to claims in the action within such original jurisdiction  
23 that they form part of the same case or controversy under Article III of the United States  
24 Constitution.” 28 U.S.C. § 1367. “A state law claim is part of the same case or  
25 controversy when it shares a ‘common nucleus of operative fact’ with the federal claims  
26 . . . .” *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004). A district court may  
27 decline to exercise supplemental jurisdiction over a state law claim if:

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- (1) the claim raises a novel or complex issue of State law,
  - (2) the claim substantially predominates over the claim or claims

1 over which the district court has original jurisdiction,  
2 (3) the district court has dismissed all claims over which it has  
3 original jurisdiction, or  
4 (4) in exceptional circumstances, there are other compelling reasons  
5 for declining jurisdiction.

6 28 U.S.C. §1367(c). In deciding whether to exercise supplemental jurisdiction, a court  
7 must consider the underlying objective of “most sensibly accommodating the values of  
8 economy, convenience, fairness, and comity.” *Exec. Software N. Am., Inc. v. USDC for*  
9 *the Cent. Dist. of Calif.*, 24 F.3d 1545, 1557 (9th Cir. 1994) (internal quotations  
10 omitted).

11 “The decision whether to continue to exercise supplemental jurisdiction over  
12 state law claims after all federal claims have been dismissed lies within the district  
13 court's discretion.” *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1091 (9th Cir.  
14 2008) (citing *Foster v. Wilson*, 504 F.3d 1046, 1051 (9th Cir. 2007)). “[I]n the usual  
15 case in which all federal-law claims are eliminated before trial, the balance of factors  
16 to be considered under the pendent jurisdiction doctrine—judicial economy,  
17 convenience, fairness, and comity—will point toward declining to exercise jurisdiction  
18 over the remaining state-law claims.” *Id.* (quoting *Carnegie-Mellon Univ. v. Cohill*,  
19 484 U.S. 343, 351 (1988)). “However dismissal of the remaining state law claims is not  
20 ‘mandatory.’” *Id.* (quoting *Carnegie-Mellon Univ.*, 484 U.S. at 350 n.7).

21 The remaining causes of action arise under state law.<sup>2</sup> The Court has granted  
22 partial summary judgment in favor of the JV on its breach of subcontract counterclaim  
23 against Helix as to liability arising from certain defective work and from abandonment  
24 of the project; however, the Court has not issued a ruling on the related damages.  
25 Further, the Court has not issued any ruling on the portion of the breach of subcontract  
26 counterclaim related to Helix’s alleged failure to adequately staff the project. The Court  
27 concludes that factors of judicial economy, fairness, and convenience to the parties  
28 weigh in favor of the Court retaining jurisdiction in order to resolve counterclaims in

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<sup>2</sup> Because the Court resolves this motion on other grounds, it does not reach any  
conclusion on whether federal enclave jurisdiction provides a separate basis for federal  
jurisdiction.

1 which the Court has previously entered an order determining liability on certain issues.  
2 The Court will continue to exercise supplemental jurisdiction over the state law claims  
3 remaining in this action. *See Satey*, 521 F.3d at 1081.

4 **IV. CONCLUSION**

5 IT IS HEREBY ORDERED THAT the motion to dismiss for lack of jurisdiction  
6 is DENIED. (ECF No. 54).

7 DATED: November 9, 2017

8   
9 **WILLIAM Q. HAYES**  
United States District Judge